88-879

Supreme Court, U.S.
FILED
OCT 24 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1988

DARRELL LAMONT LOWEN,

PETITIONER-APPELLANT,

VS.

STATE OF OREGON,

RESPONDENT-APPELLEE,

ON PETITION FOR WRIT OF CERTIORARI

TO THE OREGON COURT OF APPEALS

PETITION FOR CERTIORARI

JOHN R. MILLER, ATTORNEY
1049 EDGEWATER STREET N.W.
SALEM, OR 97304
503/399-9795
ATTORNEY FOR PETITIONER

DAVID FROHNMAYER, ATTORNEY GENERAL
VIRGINIA LINDER, SOLICITOR GENERAL
400 JUSTICE BUILDING
SALEM, OR 97310
503/378-4400
ATTORNEY FOR RESPONDENT

QUESTION PRESENTED FOR REVIEW:

DOES THE ADMISSION OF THE BREATH TEST OF THE PETITIONER WITHOUT THE OBTAINING OF A SEARCH WARRANT VIOLATE HIS RIGHTS TO DUE PROCESS OF LAW AND TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURES AS GUARANTEED BY THE FIFTH AND FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

PARTIES TO PROCEEDING:

THE PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED ARE SET FORTH IN THE CAPTION OF THE CASE AND ARE THE SOLE PARTIES HEREIN.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW..... 1

PARTIES TO PROCEEDING..... 1

TABLE OF CONTENTS..... 2

TABLE OF AUTHORITIES..... 3

REFERENCE TO REPORTS..... 5

CONCISE STATEMENT OF JURISDICTION.... 5

CONSTITUTIONAL PROVISIONS INVOLVED... 6

CONCISE STATEMENT OF CASE..... 7

STAGE OF RAISING FEDERAL ISSUES.....10

ARGUMENT FOR ALLOWANCE OF WRIT.....11

APPENDIX.....15

OPINION OF TRIAL COURT.....15

DECISION OF COURT OF APPEALS.....23

ORDER OF OREGON SUPREME COURT.....26

APPELLATE JUDGMENT.....27

PROOF OF SERVICE.....30

PROOF OF SERVICE OF CORRECTED PETITION FOR CERTIORARI.....31

TABLE OF AUTHORITIES

CASES CITED

BILBEY V. BROWN.....13
481 APP. F. SUPP. 26 (D.C., OR, 1979)

MILLER V. OREGON.....13
106 S.CT. 1973, 90 L.ED. 2D 299 (1985)

STATE V. FONDREN.....13
591 P2D 1374, 285 OR 361, CERT. DEN.
100 S.CT. 66 (1979)

STATE V. HOUSE.....11
5 OR APP 519, 485 P2D 33 (1971)

STATE V. MILLER.....13
709 P2D 225, 300 OR 203, CERT DEN.
MILLER V. OREGON, 106 S.CT. 1973.
90 L.ED. 2D 399 (1985)

STATE V. TOURTILLOTT.....12
618 P2D 423, 289 OR 845, CERT. DEN.
101 S.CT. 2051, 451 U.S. 972, 68
L.ED. 2D 352 (1980)

STATE V. WILSON.....13
733 P2d 54, 83 OR APP 616, REV. DEN.
734 P2D 1365, 303 OR 172 (1987)

UNITED STATES V. FRIESEN.....12
545 F2D 672, CERT. DEN. 97 S.CT. 2980,
433 U.S. 911, 53 L.ED 2D 1096
(C.A., OR, 1976)

STATUATORY PROVISION

28 U.S.C. 1257..... 6

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION,
AMENDMENT IV.....1, 6
UNITED STATES CONSTITUTION,
AMENDMENT V.....1, 6

OTHER AUTHORITIES

UNITED STATES SUPREME COURT RULE 20....6

REFERENCE TO REPORTS:

THE YAMHILL COUNTY DISTRICT COURT FOUND DEFENDANT GUILTY AND ENTERED A PROBATION ORDER, A COPY OF WHICH IS SUBMITTED IN THE ACCOMPANYING APPENDIX, WHICH COPY IS BY THIS REFERENCE INCORPORATED HEREIN. THE CASE WAS APPEALED TO THE COURT OF APPEALS FOR OREGON, WHERE IT BECAME CA A46075, AND WAS AFFIRMED WITHOUT OPINION. A PETITION FOR REVIEW TO THE OREGON SUPREME COURT WAS FILED, WHEREIN THIS MATTER BECAME SC S35246, WHICH PETITION FOR REVIEW WAS DENIED. THEREAFTER, ON SEPTEMBER 16, 1988, THE APPELLATE JUDGMENT WAS FILED.

CONCISE STATEMENT OF JURISDICTION:

THE PETITIONER SUBMITS THAT THE FOLLOWING IS A SUFFICIENT AND PROPER SHOWING OF JURISDICTION OF THIS COURT HEREIN. THE OREGON COURT OF APPEALS AFFIRMED THE OPINION OF THE YAMHILL COUNTY DISTRICT COURT ON MAY 11, 1988. THE OREGON

SUPREME COURT DENIED THE PETITION FOR REVIEW ON JULY 26, 1988. THE APPELLATE JUDGMENT WAS FILED ON THE 16TH DAY OF SEPTEMBER, 1988. PETITIONER HAS STANDING TO FILE HIS PETITION FOR CERTIORARI HEREIN PURSUANT TO 28 U.S.C. 1257 AND UNITED STATES SUPREME COURT RULE 20.

CCNSTITUTIONAL PROVISIONS INVOLVED:

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION ARE THE CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE. THE FIFTH AMENDMENT PROVIDES: "NO PERSON SHALL BE...DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW..." THE FOURTH AMENDMENT PROVIDES: "THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE,

SUPPORTED BY OATH, OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED."

CONCISE STATEMENT OF CASE:

THE FACTS OF THE CASE ARE AS FOLLOWS. ON SATURDAY, OCTOBER 26, 1985, AT APPROXIMATELY 1830 HOURS, OFFICER D. J. WALKER OF THE YAMHILL COUNTY SHERIFF'S OFFICE WAS ADVISED OF SUSPECT DRIVING BY A GREEN TOYOTA LEAVING AMITY ON HIGHWAY 99W TOWARD MCMINNVILLE, TRIAL TAPE 1, NO. 28, ET SEQ. AT APPROXIMATELY 1850 HOURS HE WAS FURTHER ADVISED THAT THE GREEN TOYOTA WAS ON HIGHWAY 18 BYPASS LEAVING MCMINNVILLE. OFFICER WALKER OBSERVED THE VEHICLE THAT HE TOOK TO BE THE SUBJECT VEHICLE PASSING ON HIGHWAY 18 AT THE DAYTON INTERCHANGE WITH SEVERAL CARS FOLLOWING BEHIND IT. APPROXIMATELY THREE MILES LATER THE OFFICER STOPPED A TOYOTA DRIVEN BY THE

PETITIONER. DEFENDANT LOWEN'S VEHICLE WAS BLUE WITH A WHITE TOP RATHER THAN GREEN. OFFICER WALKER INDICATED THAT HE SMELLED A "MODERATE TO STRONG ODOR OF ALCOHOLIC BEVERAGES" AS HE APPROACHED THE DRIVER'S DOOR AND THAT THE DEFENDANT PRODUCED HIS DRIVER'S LICENSE AFTER REMOVING IT FROM THE NUMEROUS CARDS CONTAINED IN HIS WALLET.

DEFENDANT WAS ADVISED BY OFFICER WALKER THAT HE WAS TAPING THE INTERVIEW AND WAS GIVEN HIS MIRANDA RIGHTS BY THE OFFICER, TRIAL TAPE 1, NO. 84, ET SEQ. AND PLAINTIFF'S EXHIBIT 1. OFFICER WALKER ADMINISTERED SEVERAL FIELD SOBRIETY TESTS AND THEN PLACED DEFENDANT UNDER ARREST FOR DRIVING UNDER THE INFLUENCE OF INTOXICANTS AND TRANSPORTED HIM TO THE YAMHILL COUNTY SHERIFF'S OFFICE IN MCMINNVILLE. OFFICER WALKER WAS AWARE THAT DEFENDANT LOWEN WAS

A LONG DISTANCE TRUCK DRIVER BY OCCUPATION, TRIAL TAPE NO. 1, AT 464. OFFICER WALKER INFORMED DEFENDANT LOWEN THAT HE HAD TO SUBMIT TO A BREATH TEST OR HIS LICENSE WOULD BE SUSPENDED FOR A ONE YEAR PERIOD OF TIME AND HE WOULD NOT BE ELIGIBLE FOR AN OCCUPATIONAL LICENSE FOR A PERIOD OF AT LEAST NINETY DAYS, TRIAL TAPE 2 AT 29, AND PLAINTIFF'S EXHIBIT 1. DEFENDANT LOWEN DID NOT WISH TO GIVE A BREATH TEST, BUT FELT COMPELLED TO DO SO BY OFFICER WALKER. THIS IS EVIDENT FROM THE DISCUSSION OF OFFICER WALKER AND DEFENDANT LOWEN ON THE INTERVIEW TAPE, PLAINTIFF'S EXHIBIT 1 AND TRIAL TAPE 2, AT 29 ET SEQ. A BREATH TEST OF .18% BLOOD ALCOHOL WAS OBTAINED BY THE OFFICER.

THERE WAS NO EVIDENCE WHATSOEVER OF ANY EXIGENT CIRCUMSTANCES OR PRACTICAL NECESSITY THAT REQUIRED THE IMMEDIATE

TAKING OF A BREATH TEST AS OPPOSED TO TO THE OBTAINING OF A WARRANT COMPELLING SAID BREATH TEST. WHEN BEING CROSS-EXAMINED BY DEFENSE COUNSEL, OFFICER WALKER WAS CLEAR THAT HE MADE NO EFFORTS TO CONTACT ANY JUDGE OR OFFICER OF THE COURT IN AN EFFORT TO OBTAIN A WARRANT FOR SAID BREATH, SEE CROSSEXAMINATION OF OFFICER WALKER. THE OFFICER'S SOLE EXPLANATION FOR MAKING NO EFFORTS TO OBTAIN A WARRANT WAS THAT THE ALLEGED INCIDENT HAD NOT OCCURRED DURING BUSINESS HOURS. AS IT WAS ON THE WEEK-END HE DID NOT KNOW IF A JUDGE WOULD HAVE BEEN AVAILABLE FOR PURPOSES OF ISSUANCE OF A WARRANT.

STAGE OF RAISING FEDERAL ISSUES:

THE DEFENDANT FIRST RAISED THE FEDERAL ISSUES BY FILING A MOTION TO SUPPRESS OR EXCLUDE EVIDENCE OF THE BREATH TEST.

THIS MOTION SPECIFICALLY CITED THE FOURTH AND FIFTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. JUDGE HARRIS DENIED THAT MOTION DURING THE COURSE OF THE TRIAL, WITH EXCEPTION THERETO BEING NOTED. THESE ISSUES WERE RAISED AT THE COURT OF APPEALS LEVEL BY BRIEF, AND AT THE OREGON SUPREME COURT LEVEL, BY PETITION FOR REVIEW.

ARGUMENT FOR ALLOWANCE OF WRIT:

A PRIMARY DUTY OF OUR CRIMINAL JUSTICE SYSTEM IS TO PRESERVE THE RIGHTS OF THE DEFENDANT, STATE V. HOUSE, 5 OR APP 519, 485 P2D 33 (1971). THE DEFENDANT HAS AN UNASSAILABLE RIGHT TO DUE PROCESS OF LAW IN THE CRIMINAL PROCEEDING CHARGING HIM WITH DRIVING UNDER THE INFLUENCE OF INTOXICANTS. A CONDITION PRECEDENT TO A FAIR TRIAL IS THE SUPPRESSION OR EXCLUSION OF EVIDENCE IMPROPERLY OBTAINED.

IN THE INSTANT CASE THERE IS NO SHOWING WHATSOEVER OF EXIGENT CIRCUMSTANCES OR PRACTICAL NECESSITY THAT WOULD HAVE EXCUSED THE OFFICER FROM THE OBTAINING OF A WARRANT FOR THE BREATH TEST. IN DETERMINING THE CONSTITUTIONALITY OF A PARTICULAR GOVERNMENT PROCEDURE, THE PROMOTION OF LEGITIMATE GOVERNMENT INTEREST AT STAKE IS BALANCED AGAINST THE INDIVIDUAL'S RIGHT TO HAVE HIS OR HER PRIVACY AND PERSONAL SECURITY BE FREE FROM ARBITRARY AND OPPRESSIVE GOVERNMENTAL INTERFERENCE, STATE V. TOURTILLOTT, 618 P2D 423, 289 OR 845, CERT. DEN. 101 S.CT. 2051, 451 U.S. 972, 68 L.ED. 2D 352 (1980). THERE IS A NECESSITY OF AND A PREFERENCE FOR WARRANTS. EXCEPTIONS ARE FEW AND FAR BETWEEN, SEE U.S. V. FRIESEN, 545 F2D 672, CERT. DEN. 97 S.CT. 2980, 433 U.S.

911, 53 L. ED. 2D 1096 (C.A., OR, 1976), BILBEY V. BROWN, 481 APP. F. SUPP. 26 (D.C., OR, 1979), STATE V. MILLER, 709 F2D 225, 300 OR 203, CERT. DEN., MILLER V. OREGON, 106 S.CT. 1793, 90 L.ED. 2D 339 (1985), STATE V. FONDREN, 591 P2D 1374, 285 OR 361, CERT. DEN. 100 S.CT. 66 (1979), and STATE V. WILSON, 733 F2D 54, 83 OR APP 616, REV. DEN. 734 P2d 1365, 303 OR 172 (1987). THE ADMISSION OF THE BREATH TEST WITHOUT THE PRIOR OBTAINING OF A WARRANT THEREFOR VIOLATES THE DEFENDANT'S RIGHTS TO BE FREE FROM UNLAWFUL SEARCHES AND SEIZURES AND TO DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTH AND FIFTH AMENDMENTS TO THE UNITED STATES CONSTITUTION. THIS COURT OUGHT TO GRANT THE PETITION FOR CERTIORARI AND

REVERSE THE ACTION OF THE TRIAL COURT SUPPRESSING THE BREATH TEST AS HAVING BEEN IMPROPERLY OBTAINED AS IT WAS TAKEN WITHOUT A SEARCH WARRANT.

DATED THIS 24TH DAY OF OCTOBER, 1988.

RESPECTFULLY SUBMITTED,

_____

JOHN R. MILLER
OSB NO. 73204
UNITED STATES SUPREME
COURT BAR MEMBER
ATTORNEY FOR PETITIONER

IN THE DISTRICT COURT OF THE

STATE OF OREGON

FOR THE COUNTY OF YAMHILL

THE STATE OF OREGON,	)	
	)	
PLAINTIFF,	)	NO. 46211
	)	
VS.	)	PROBATION ORDER
	)	
DARRELL LAMONT LOWEN,	)	
	)	
DEFENDANT.	)	

THE ABOVE-NAMED DEFENDANT, WITH HIS ATTORNEY JOHN MILLER, CAME BEFORE ME ON THE 10TH DAY OF SEPTEMBER, 1987, AND WAS CONVICTED TO A COMPLAINT FILED HEREIN ACCUSING THE DEFENDANT OF THE CRIME OF DRIVING UNDER THE INFLUENCE OF INTOXICANTS (CONTINUED FOR SENTENCING UNTIL SEPTEMBER 16, 1987);

NOW, THEREFORE, IT IS HEREBY ORDERED THAT IMPOSITION OF SENTENCE BE, AND THE SAME HEREBY IS SUSPENDED, AND THE DEFENDANT SHALL BE PLACED UPON PROBATION TO YAMHILL COUNTY COMMUNITY CORRECTIONS

PROGRAM/STATE OF OREGON FOR A PERIOD OF TWO (2) YEARS UPON THE FOLLOWING CONDITIONS:

1. DEFENDANT SHALL REMAIN UNDER THE SUPERVISION AND CONTROL OF THE YAMHILL COUNTY COMMUNITY CORRECTIONS PROGRAM/STATE OF OREGON, AND SHALL ANSWER ALL REASONABLE INQUIRIES AND FOLLOW ALL DIRECTIONS OF HIS PROBATION COUNSELOR.

2. DEFENDANT SHALL NOT VIOLATE ANY MUNICIPAL, COUNTY, STATE OR FEDERAL LAWS.

3. DEFENDANT SHALL NOT LEAVE THE STATE OF OREGON WITHOUT FIRST OBTAINING PERMISSION IN WRITING FROM THE PROBATION COUNSELOR.

4. DEFENDANT SHALL NOTIFY HIS PROBATION COUNSELOR OF ANY CHANGE OF RESIDENCE AND PHONE NUMBER AND SHALL CONSULT HIS PROBATION COUNSELOR ABOUT

ANY MOVE IN ADVANCE OF ANY MOVE.

5. DEFENDANT SHALL NOT KNOWINGLY ASSOCIATE WITH ANY PERSON WITH A CRIMINAL RECORD WITHOUT THE APPROVAL OF HIS PROBATION COUNSELOR.

6. DEFENDANT SHALL SEEK AND MAINTAIN GAINFUL EMPLOYMENT AND SUPPORT OF HIMSELF AND HIS DEPENDENTS TO THE BEST OF HIS ABILITY.

7. DEFENDANT SHALL REPORT TO HIS PROBATION COUNSELOR AS DIRECTED BY THE COURT OR THE PROBATION COUNSELOR.

8. DEFENDANT SHALL PAY A FEE OF $15.00 PER MONTH TO HELP PAY THE COST OF PROBATIONARY SUPERVISION, SAID PAYMENT SHALL BE PAID ON OR BEFORE THE 10TH DAY OF EACH MONTH HEREAFTER TO THE YAMHILL COUNTY CLERK.

9. DEFENDANT SHALL PAY ALL SUMS ORDERED BY THE COURT PRIOR TO THE EXPIRATION OF THIS PROBATION.

___ DEFENDANT SHALL BE IN OFFICIAL DETENTION AND CONFINEMENT IN THE YAMHILL COUNTY JAIL FOR A PERIOD OF _____.

DEFENDANT SHALL RECEIVE CREDIT FOR TIME SERVED ON THE ABOVE CHARGE.

/___/ SAID SENTENCE TO COMMENCE ON _____, _____, 19___ AT _____.

/___/ SAID SENTENCE TO BE SERVED ON WEEKENDS COMMENCING ON _____, _____, 19___, AT _____, TO _____, _____, 19___ AT _____, AND EACH LIKE _____ TO _____ PERIOD THEREAFTER UNTIL SAID SENTENCE IS SERVED IN FULL.

10. DEFENDANT SHALL ABSOLUTELY ABSTAIN FROM THE USE OF ALCOHOLIC BEVERAGES

OR ANY OTHER FORM OF INTOXICANT.

11. DEFENDANT SHALL FOLLOW ANY PROGRAM OF ALCOHOL REHABILITATION RECOMMENDED:

/XX/ BY HIS PROBATION COUNSELOR.

/___/ BY THE MARION-POLK-YAMHILL COUNCIL ON ALCOHOLISM.

/___/ SAID PROGRAM TO INCLUDE THE USE OF MONITORED ANTABUSE, IF DEFENDANT IS MEDICALLY QUALIFIED.

___ DEFENDANT SHALL FOLLOW ANY PROGRAM OF MENTAL HEALTH COUNSELING RECOMMENDED BY HIS PROBATION COUNSELOR.

12. DEFENDANT SHALL COMPLETE EIGHTY (80) HOURS OF CIVIC, CHARITABLE OR COMMUNITY ACTIVITY ON A VOLUNTEER BASIS:

/___/ ON OR BEFORE _____, 19___.

/XX/ AND SHALL REPORT AS REQUIRED TO THE YAMHILL COUNTY COMMUNITY CORRECTIONS PROGRAM.

13. DEFENDANT SHALL PAY CRIMINAL INJURIES COMPENSATION FEE IN THE SUM OF $40.00.

___ DEFENDANT SHALL MAKE RESTITUTION IN THE SUM OF $_____. SAID RESTITUTION AS RECEIVED BY THE YAMHILL COUNTY TRIAL COURT CLERK SHALL BE DISBURSED TO THE VICTIM(S) LISTED ON THE SHEET ATTACHED HERETO.

___ DEFENDANT SHALL REPAY THE STATE OF OREGON IN THE SUM OF $_____ FOR EXPENSES INCURRED IN OBTAINING COUNSEL FOR THE DEFENDANT.

14. DEFENDANT SHALL PAY A FINE IN THE SUM OF $250.00.

15. DEFENDANT SHALL PAY AN ALCOHOL EVALUATION ASSESSMENT OF $175.00.

IT IS FURTHER HEREBY ORDERED THAT THE HEREIN ORDERED TOTAL FINANCIAL OBLIGATION TO THIS COURT SHALL BE PAID

TO THE YAMHILL COUNTY TRIAL COURT CLERK:

/XX/ FORTHWITH.

/__/ IN FULL ON OR BEFORE _____ 19___.

/__/ AT THE RATE OF $_____ PER MONTH ON OR BEFORE THE _____ DAY OF EACH MONTH THEREAFTER UNTIL SAID SUM IS PAID IN FULL.

/__/ AT THE DIRECTION OF THE PROBATION COUNSELOR.

IT IS FURTHER HEREBY ORDERED:

/__/ SECURITY RELEASE AMOUNT POSTED ON _____, 19___, BY _____

_____

BE AND THE SAME HEREBY IS APPLIED TO THE TOTAL FINANCIAL OBLIGATION HEREIN ORDERED ABOVE.

/__/ SECURITY RELEASE AMOUNT, IF ANY, BEING HELD IN THE ABOVE-ENTITLED MATTER BE AND THE SAME HEREBY IS EXONERATED.

UPON ANY VIOLATION OF THE ABOVE-MENTIONED LAWS OR OF THIS PROBATION ORDER, OR ANY DIRECTION OF THE PROBATION COUNSELOR, THIS ORDER SHALL BE REVOKED AND:

/ / DEFENDANT WILL BE IMPRISONED IN THE YAMHILL COUNTY JAIL TO SERVE THE SENTENCE HERETOFORE IMPOSED.

/XX/ SENTENCE WILL BE IMPOSED.

DATED THIS 17TH DAY OF SEPTEMBER, 1987.

/S/ WAYNE HARRIS

DISTRICT JUDGE

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL. TRIAL COURT ADMINISTRATOR

BY _____

IN THE COURT OF APPEALS OF THE

STATE OF OREGON

STATE OF OREGON,	)	
	)	TRIAL COURT/
RESPONDENT,	)	
	)	AGENCY
V.	)	
	)	NO. 46211 (D)
DARRELL LAMONT LOWEN,	)	
	)	CA A46075
APPELLANT.	)	

APPEAL OR JUDICIAL REVIEW FROM:

YAMHILL COUNTY

DATE ARGUED OR SUBMITTED ON BRIEFS:

APRIL 18, 1988

BEFORE: WARDEN, PRESIDING JUDGE, AND

VAN HOOMISSEN AND GRABER, JUDGES

ATTORNEY FOR APPELLANT:

JOHN R. MILLER, SALEM

ATTORNEY FOR RESPONDENT:

THOMAS H. DENNEY, SALEM

AFFIRMED WITHOUT OPINION.

DATE FILED: MAY 11, 1988

****

PREVAILING PARTY OR PARTIES: RESPONDENT

[ ] NO COSTS AWARDED

[ ] COSTS AWARDED TO THE PREVAILING PARTY PAYABLE BY:

IN A CRIMINAL, POST CONVICTION RELIEF, HABEAS CORPUS, JUVENILE OR OTHER CASE IN WHICH A PARTY MAY BE REPRESENTED BY APPOINTED COUNSEL ENTITLED TO COMPENSATION UNDER ORS 138.500, IF THE PREVAILING PARTY IS A PRIVATE PARTY AND IS REPRESENTED BY RETAINED COUNSEL OR APPEARED PRO SE, THE PREVAILING PARTY IS AWARDED COSTS.

****

(THE FOLLOWING ENTRIES WILL BE MADE WHEN THE APPELLATE JUDGMENT ISSUES.)

IT IS ORDERED THAT THE PREVAILING PARTY OR PARTIES RECOVER FROM

IN THE AMOUNT OF $, AND ATTORNEY FEES IN THE AMOUNT OF $.

IT IS FURTHER ORDERED THAT JUDGMENT BE ENTERED IN FAVOR OF THE JUDICIAL DEPARTMENT AND AGAINST

IN THE AMOUNT OF $ FOR FILING FEES NOT WAIVED AND UNPAID AT THE TIME OF ENTRY OF THE FINAL WRITTEN DISPOSITION OF THIS CASE. ORS 21.605.

DATE SUPREME COURT DENIED PETITION FOR REVIEW:

DATE APPELLATE JUDGMENT FILED:

0015Z:7/87

FILED

COURT OF APPEALS

MAY 11, 1988

STATE COURT ADMINISTRATOR

BY _____ DEPUTY

IN THE SUPREME COURT OF THE

STATE OF OREGON

STATE OF OREGON,	)	ORDER DENYING
	)	
RESPONDENT,	)	REVIEW
	)	
V.	)	CA A46075
	)	
LOWEN, DARRELL LAMONT	)	SC S35246
	)	
PETITIONER.	)	

THE COURT HAS CONSIDERED THE PETITION FOR REVIEW AND ORDERS THAT IT BE DENIED.

DATE: JULY 26, 1988.

/S/ EDWIN J. PETERSON

EDWIN J. PETERSON

CHIEF JUSTICE

COPIES TO:

DENNEY,THOMAS H ATTORNEY FOR: RESPONDENT

MILLER,JOHN R ATTORNEY FOR: PETITIONER

IN THE COURT OF APPEALS OF THE

STATE OF OREGON

STATE OF OREGON,	)	
	)	
RESPONDENT,	)	TRIAL COURT/
	)	
V.	)	AGENCY
	)	
DARRELL LAMONT LOWEN,	)	NO. 46211 (D)
	)	
APPELLANT.	)	CA A46075

APPEAL OR JUDICIAL REVIEW FROM:

YAMHILL COUNTY

DATE ARGUED OR SUBMITTED ON BRIEFS:

APRIL 18, 1988

BEFORE: WARDEN, PRESIDING JUDGE, AND

VAN HOOMISSEN AND GRABER, JUDGES

ATTORNEY FOR APPELLANT:

JOHN R. MILLER, SALEM

ATTORNEY FOR RESPONDENT:

THOMAS H. DENNEY, SALEM

AFFIRMED WITHOUT OPINION.

DATE FILED: MAY 11, 1988

****

PREVAILING PARTY OR PARTIES:

RESPONDENT

[ ] NO COSTS AWARDED

[ ] COSTS AWARDED TO THE PREVAILING PARTY PAYABLE BY:

IN A CRIMINAL, POST CONVICTION RELIEF, HABEAS CORPUS, JUVENILE OR OTHER CASE IN WHICH A PARTY MAY BE REPRESENTED BY APPOINTED COUNSEL ENTITLED TO COMPENSATION UNDER ORS 138.500, IF THE PREVAILING PARTY IS A PRIVATE PARTY AND IS REPRESENTED BY RETAINED COUNSEL OR APPEARED PRO SE, THE PREVAILING PARTY IS AWARDED COSTS.

****

[THE FOLLOWING ENTRIES WILL BE MADE WHEN THE APPELLATE JUDGMENT ISSUES.]

IT IS ORDERED THAT THE PREVAILING PARTY OR PARTIES RECOVER FROM

COSTS AND DISBURSEMENTS IN THE AMOUNT OF $, AND ATTORNEY FEES IN THE AMOUNT OF $.

IT IS FURTHER ORDERED THAT JUDGMENT BE ENTERED IN FAVOR OF THE JUDICIAL DEPARTMENT AND AGAINST

IN THE AMOUNT OF $ FOR FILING FEES NOT WAIVED AND UNPAID AT THE TIME OF ENTRY OF THE FINAL WRITTEN DISPOSITION OF THIS CASE. ORS 21.605.

DATE SUPREME COURT DENIED PETITION FOR REVIEW: JULY 26, 1988

DATE APPELLATE JUDGMENT FILED:

SEPTEMBER 16, 1988

0015Z:7/87

FILED

COURT OF APPEALS

MAY 11, 1988

STATE COURT ADMINISTRATOR

BY _____ DEPUTY

APPELLATE JUDGMENT

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, JOHN R. MILLER, A MEMBER OF THE BAR OF THE UNITED STATES SUPREME COURT HEREBY CERTIFY THAT I PERSONALLY DELIVERED THREE CERTIFIED TRUE COPIES OF THE FOREGOING PETITION FOR CERTIORARI TO THE LAW OFFICE OF DAVID FROHNMAYER, ATTORNEY GENERAL FOR THE STATE OF OREGON, AND VIRGINIA LINDER, SOLICITOR GENERAL FOR THE STATE OF OREGON, LEAVING SAID COPIES THEREAT WITH AN EMPLOYEE THEREFOR ON THE 24TH DAY OF OCTOBER, 1988.

_____

JOHN R. MILLER

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED, JOHN R. MILLER, A MEMBER OF THE BAR OF THE UNITED STATES SUPREME COURT HEREBY CERTIFY THAT I PERSONALLY DELIVERED THREE CERTIFIED TRUE COPIES OF THE FOREGOING CORRECTED PETITION FOR CERTIORARI TO THE LAW OFFICE OF DAVID FROHNMAYER, ATTORNEY GENERAL FOR THE STATE OF OREGON, AND VIRGINIA LINDER, SOLICITOR GENERAL FOR THE STATE OF OREGON, LEAVING SAID COPIES THEREAT WITH AN EMPLOYEE THEREFOR ON THE 23RD DAY OF NOVEMBER, 1988.

_____

JOHN R. MILLER

ATTORNEY FOR PETITIONER